

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAMES HAYDEN,

Plaintiff,

V.

2K GAMES, INC., et al.,

Defendants.

CASE NO. 1:17-cv-02635-CAB

JUDGE CHRISTOPHER A. BOYKO

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO CONTINUE TRIAL

Plaintiff, James Hayden, submits this response to Defendants’ (collectively, “Take-Two’s”) Motion to Continue Trial. Mr. Hayden is prepared to and would prefer to proceed with the schedule the Parties jointly submitted in September and the Court adopted shortly thereafter, including pre-trial submissions on April 26 and trial beginning on June 20. Mr. Hayden filed his complaint in 2017, is eager to resolve this case, and is dismayed by Take-Two’s apparent efforts to delay trial indefinitely.

Mr. Hayden was surprised by Take-Two's Motion.¹ Take-Two claims that it "asked for Plaintiff's position on the instant Motion and whether he will join it," but that request was made over two months ago in January (Ex. A, 1-31-22 Means Email) and Take-Two never raised the matter again before filing its Motion. Moreover, Take-Two's January request for a stay was premised both on the pending motions and the Court's previous COVID protocols that suspended trials (*id.*), which have now been lifted (Amended General Order No. 2020-08, issued

¹ “Motion” refers to Take-Two’s Motion to Continue Trial (ECF. No. 141).

April 5, 2022). At that time, Mr. Hayden believed such a request was premature. (*Id.* at 2-2-22 Alexander Email.) Mr. Hayden also disagreed with Take-Two's proposed request because neither Party had suggested—or even discussed—conditioning the pre-trial submission dates on the Court's summary judgment ruling. (*Id.*) Mr. Hayden disagrees with several of Take-Two's claims in its current Motion, including its suggestion that Mr. Hayden's Motion to Leave to File Fifth Amended Complaint, if granted, would meaningfully affect the Parties' preparation of exhibit lists, jury instructions, and other pre-trial exhibits. This is not the case. As will be set forth in Mr. Hayden's forthcoming reply brief supporting his Motion for Leave, the proposed amendment to add NBA 2K21 and NBA 2K22 would not require any schedule change and would not meaningfully impact trial preparation, as the amendment does not add new causes of action or new defenses – it merely seeks to address Take-Two's latest infringements.

That said, Mr. Hayden understands that there are several motions pending with complex issues, which this Court is in the process of addressing. (3-24-22 Order.) Accordingly, if continuing the trial for a short time (*e.g.*, 30 to 60 days) would benefit the Court's efforts to decide these motions before the pre-trial submissions are due, Mr. Hayden would not oppose such a continuance. He would respectfully request that any such continuance also set a new trial date.

Dated: April 8, 2022

Respectfully submitted,

By: /s/ Andrew Alexander
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CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2022, a copy of the foregoing was filed electronically. Notice of this filing was sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt, and parties may access this filing through the Court's system.

/s/ Andrew Alexander

One of the attorneys for Plaintiff